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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF WASHINGTON**

8 STEPHANIE GREEN,

9 Plaintiff,

10 v.

11 UNITED STEEL WORKERS
12 INTERNATIONAL,

13 Defendant.

NO. CV-07-5066-RHW

**ORDER GRANTING MOTION
TO DISMISS, WITH LEAVE TO
AMEND**

Before the Court are Defendants' United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO•CLC, Vince Stoops, Claudia Kay Stoops, Jim Woodward and Doris Woodward Motion to Dismiss (Ct. Rec. 31) and Defendants' Hanford Atomic Metal Trades Counsel, Dave Molnaa, and Jill Molnaa Motion to Dismiss (Ct. Rec. 37). A telephonic hearing was held on the motions on March 4, 2008. Plaintiff was represented by Janet Taylor; Defendants were represented by Robert Mitchell, Daniel Hutzelniler, Rebecca Smullin and Peter Nussbaum. The order is intended to memorialize and supplement the Court's oral ruling.

BACKGROUND

The following statement of facts is taken from Plaintiff's complaint.

Plaintiff is a duly elected President of the United Steelworkers Local 12-369 in November, 2005. The former Executive Board of the Local refused to seat her, and the majority of the Board opposes her, and has constantly tried to undermine her work and they think of new ways to attack Plaintiff.

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At some point prior to 2006, Plaintiff was elected to a steward position, and after the election, the individually named Defendants changed the steward position's scope and duties. In 2006, Plaintiff filed a charge at the EEOC, and in 2007, the EE)C issued a decision finding that there was a reason to believe that violations had occurred on the basis of race and gender. Also, in 2006, Plaintiff filed an internal Human Rights complaint with the International, which Plaintiff alleges failed to process and investigate. On January, 2007, Plaintiff filed additional charges with the EEOC against the Local and International, alleging race and gender discrimination, and retaliation. The EEOC issued right to sue letters on August 13, 2007. Defendant Molnaa has served as the President of HAMTC, and the individuals names in the complaint were members, employees, officers or agents of Local 12-369, HAMTC or the International.

Based on these facts, Plaintiff asserts the following causes of actions:

- Count 1. Defendants' conduct violates 29 U.S.C. § 411.
- Count 2. Defendant International's conduct breaches and violates their Constitution and the Local's By-laws.
- Count 3. Defendant International's conduct breaches their fiduciary duty to Plaintiff;
- Count 4. Defendant HAMTC's conduct breaches and violates their By-laws;
- Count 5. Defendant HAMTC's conduct breaches their fiduciary duty to Plaintiff;
- Count 6. All Defendants violated Title VII (except HAMTC and Molnaa); 42 U.S.C. § 1981; Washington's Law Against Discrimination;
- Count 7. All Defendants unlawfully retaliated against Plaintiff for opposing race and gender discrimination;
- Count 8. All Defendants violated duties as members, employees, officers, and agents of Local 12-369, the International, and HAMTC;
- Count 9. All Defendants wrongfully interfered with Plaintiff's business

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1 relationship with her employer.

2 **DISCUSSION**

3 **A. Standard of Review**

4 The purpose of rule 12(b)(6) is to test the sufficiency of the statement of a
 5 claim showing that plaintiff is entitled to relief, without forcing defendant to be
 6 subjected to discovery. *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir.
 7 1993). The motion to dismiss does not involve evaluating the substantive merits of
 8 the claim. *Id.* The standard is viewed liberally in favor of plaintiffs. *Id.* at 1275.
 9 Read in conjunction with Fed. R. Civ. P. 8(a), the complaint should be dismissed
 10 where plaintiff fails to state an adequate “short and plain statement of the claim
 11 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The court
 12 must evaluate whether, in the light most favorable to the pleader, and resolving all
 13 discrepancies in the favor of the pleader, the actual allegations asserted raise a right
 14 to relief above the speculative level. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct.
 15 1955, 1968-69 (2007).¹ In short, the complaint must provide “plausible” grounds
 16 for recovery on its face. *Id.*

17 Rule 12(b)(6) motions are viewed with disfavor. *Broam v. Bogan*, 320 F.3d
 18 1023, 1028 (9th Cir. 2003). “Dismissal without leave to amend is proper only in
 19 ‘extraordinary’ cases.” *Id.*

20 **B. Analysis**

21 As an initial matter, the Court finds that Plaintiff’s complaint fails to set
 22 forth the plausible grounds for recovery on its face. Moreover, the Court finds the

23 ¹The *Twombly* Court rejected the *Conley v. Gibson*, 355 U.S. 41, 45-56
 24 (1957), standard that held that “[i]n appraising the sufficiency of the complaint we
 25 follow, of course, the accepted rule that a complaint should not be dismissed for
 26 failure to state a claim unless it appears beyond doubt that the plaintiff can prove
 27 no set of facts in support of his claim which would entitle him to relief. *Id.* at
 28 1968-69.

1 complaint deficient for the following reasons: First, the causes of action section is
 2 deficient because it does not reference any facts and does not give any indication of
 3 which alleged facts are relevant to each stated claim. Second, the complaint fails
 4 to indicate which individual defendant or defendants are responsible for which
 5 alleged wrongful act. Third, the complaint fails to allege or describe any illegal
 6 action or conduct, regardless of who was responsible. Fourth, the Complaint fails
 7 to mention Plaintiff's race and fails to allege any act, effect, or result that suggests
 8 whether, how, or when Plaintiff was treated differently than others of a different
 9 race or gender [or because of her race]. Fifth, the complaint fails to allege any
 10 conduct in the wake of filing her EEOC complaint to suggest retaliatory action and
 11 finally, the Complaint fails to allege facts that would constitute a violation of 29
 12 U.S.C. § 411.

13 Plaintiff is granted leave to file an amended complaint to permit her to
 14 address these deficiencies.

15 Both motions ask that the Court dismiss certain claims with prejudice.
 16 Plaintiff agrees that she cannot bring a Title VII claim for discrimination or
 17 retaliation against the individually-named Defendants.

18 The individually-named Defendants also argue that they cannot be sued
 19 under state law for discrimination or retaliation for acts they have allegedly
 20 undertaken as a union official. They argue that counts six (§ 1981, WLAD) and
 21 counts seven (retaliation) must be dismissed with prejudice. The Court agrees that
 22 § 49.60.190(3) does not provide for individual liability for union discrimination.

23 In her response, Plaintiff asserts that because she alleged that the
 24 individually-named Defendants were acting in concert with the other Defendants,
 25 they can be held individually liable for her claim of discrimination under
 26 Washington law, citing to Wash. Rev. Code § 49.60.220, which states:

27 It is an unfair practice for any person to aid, abet, encourage, or
 28 incite the commission of any unfair practice, or to attempt to obstruct
 or prevent any other person from complying with the provisions of
 this chapter or any order issued thereunder.

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1 Wash. Rev. Code § 49.60.220.

2 In *Jenkins v. Palmer*, 116 Wash. App. 671, 675-77 (2003), the court made
 3 the following observations:

4 RCW 49.60.220, although broad, focuses on conduct that
 5 encourages others to violate the WLAD. The references to “aid, abet,
 6 encourage, or incite” and to “prevent any other person from
 7 complying” show that the statute applies only where the actor is
 8 attempting to or has involved a third person in conduct that would
 9 violate the WLAD.

10 *Id.*

11 The Court does not find that Plaintiff could not provide a plausible claim for
 12 relief under this act. Accordingly, the Court will not dismiss this claim with
 13 prejudice at this time, but Defendants can renew their motions after Plaintiff has
 14 filed her Amended Complaint.

15 Also, Plaintiff is asserting a claim for retaliation under Wash. Rev. Code
 16 49.60.210(1).² Under Washington law, it is possible for supervisors to be held
 17 individually liable for retaliatory conduct. *See Renz v. Spokane Eye Clinic*, 114
 18 Wash. App. 611 (2002). Given the “other person” language contained in this
 19 statute, the Court will not dismiss this claim with prejudice.

20 Defendants also argue that Section 301 of the Labor Management Relations
 21 Act (LRMA) bars claims brought against individual union defendants. In reading
 22 the Complaint as it stands, it is not clear the exact contours of any claim under
 23 Section 301 of LRMA, which permits suits for violations of breaches of the
 24 collective bargaining agreement and for breaches of the duty of fair representation.
 25 Given the inadequacies of the Complaint, the Court is not in a position to

26 ²It is an unfair practice for any employer, employment agency, labor union,
 27 or other person to discharge, expel, or otherwise discriminate against any person
 28 because he or she has opposed any practices forbidden by this chapter, or because
 he or she has filed a charge, testified, or assisted in any proceeding under this
 chapter. Wash. Rev. Code § 49.60.210(1).

determine whether Claim 8 and 9 should be dismissed with prejudice. Defendants can renew their motions after Plaintiff has filed her Amended Complaint.

Accordingly, IT IS HEREBY ORDERED:

1. Defendants' United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO•CLC, Vince Stroops, Claudia Kay Stroops, Jim Woodward and Doris Woodward Motion to Dismiss (Ct. Rec. 31) is **GRANTED**.

2. Defendants' Hanford Atomic Metal Trades Counsel, Dave Molnaa, and Jill Molnaa Motion to Dismiss (Ct. Rec. 37) is **GRANTED**.

3. Defendant United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO•CLC, Vince Stroops, Claudia Kay Stroops, Jim Woodward and Doris Woodward Motion to Dismiss (Ct. Rec. 26) is **DENIED, as moot**, with leave to renew after Defendants have answered the amended complaint.

4. Within 30 days from the day of this order, Plaintiff shall file her Amended Complaint. If Plaintiff does not file an Amended Complaint within 30-day, the above-captioned case will be dismissed.

5. The parties' Stipulation for Order Extending Time for Defendants Domina, et al. to File Reply on Motion to Dismiss (Ct. Rec. 56) is **GRANTED**. Defendants shall file their reply on or before March 7, 2008.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 7th day of March, 2008.

s/Robert H. Whaley
ROBERT H. WHALEY
Chief United States District Judge

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